

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO.: 3:10-CV-398-FDW-DSC**

THOMAS ROBINSON,

Plaintiff,

v.

**AFFINIA GROUP, INC. D/B/A/ WIX
FILTRATION PRODUCTS DIVISION,
et. al.,**

Defendants.

MEMORANDUM AND ORDER

THIS MATTER is before the Court on “Defendants’ Objection and Motion to Strike Plaintiff’s First Set of Interrogatories and Request for Production of Documents and First Set of Requests for Admissions ...” (document #14) and “Plaintiff’s ... Motion to Conduct a Remote Telephone Deposition of Deponent Dean DeMartino ...” (document #15), as well as the parties’ associated briefs and exhibits. See document s ##16-18.

These Motions have been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §636(b), and are now ripe for the Court’s consideration.

A detailed discussion of the factual background and procedural history in this matter is contained in the Court’s “Order” (document #13) (denying Defendants’ “Motion to Dismiss” (document #7) and “Motion for Sanctions” (document #8)).

Concerning Plaintiff’s Motion to depose Dean DeMartino by telephone, Defendants respond that on April 1, 2011, Plaintiff deposed Cheryl Kendrick in lieu of DeMartino and that the Motion is, therefore, moot.

In their Motion, Defendants seek to strike Plaintiff’s first set of written discovery requests,

which were not served until March 8, 2011.

The Case Management Order, entered by the Honorable Frank D. Whitney on October 6, 2010, requires that “[a]ll discovery shall be commenced or served in time to be completed by **April 4, 2011.**” Document #12 at 2 (emphasis in original).

Except for agreeing to conduct a Rule 30(b)(6) deposition out of time, the parties have not discussed or agreed to a stipulated extension of the discovery deadline and Plaintiff has not filed a motion seeking such an extension from the Court.

Accordingly, where Plaintiff’s written discovery requests were untimely served in violation of the Case Management Order, Defendants’ Motion to Strike those requests will be granted.

NOW THEREFORE, IT IS ORDERED:

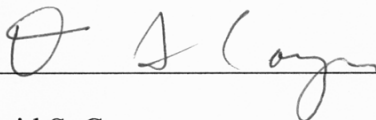
1. “Defendants’ Objection and Motion to Strike Plaintiff’s First Set of Interrogatories and Request for Production of Documents and First Set of Requests for Admissions ...” (document #14) is **GRANTED** and those discovery requests are **STRICKEN**.

2. “Plaintiff’s ... Motion to Conduct a Remote Telephone Deposition of Deponent Dean DeMartino ...” (document #15) is **DENIED AS MOOT**.

3. The Clerk is directed to send copies of this Order to counsel for the parties; and to the Honorable Frank D. Whitney.

SO ORDERED.

Signed: April 27, 2011



David S. Cayer
United States Magistrate Judge

